IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1166 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI ASHOK HAMIRBHAI PATNI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VM DHOTRE for Applicant(s) : 1,
Mrs. Hansa B. Punani, ld. Addl. Public Prosecutor for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 21/10/2005

ORAL JUDGMENT

1. The order of externment dated 18.03.2005 passed by the respondent no.2 and the order dated 08.08.2005 passed in appeal by respondent no.1, are the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

2. That show cause notice dated 17.07.2004 under Section 59 of the Bombay Police Act was issued to the externee asking the petitioner to show cause as to why he should not be externed from the limit of Ahmedabad Police Commissioner, Ahmedabad Rural, and its adjoining districts of Gandhinagar, Kheda and Mahesana for the period of 2 years on the ground of his indulging into illegal and

violative activities. The concerned authority has given the gist of statements of 10 witnesses reflecting the illegal activities of the petitioner, which mainly pertaining to extorting money from the members of the public and the witnesses as well. By and large the allegations remain within the domain of coercing the witnesses to pay some amount towards installment by administering threat or showing weapons.

3. A reply was submitted by the petitioner, which was received by the Competent Authority on 30th July, 2004 and in details, the petitioner has clarified that why the statements of all the witnesses are false and the incidents narrated by them do not stand to the scrutiny of evidence even prima-facie. It was submitted that the allegations levelled against the petitioner are mainly pertaining to the month of May, 2004, during which period

marriage ceremony of son of petitioner was scheduled on 09.05.2004 and other rituals continued thereafter also. In view of the submissions made that the proceedings which were initiated pursuant to the show cause notice, required to be dropped or discontinued.

4. However, the Competent Authority after considering relevant materials and the statements of witnesses and without dealing specifically with the reply submitted by the petitioner, proceeded to exercise powers under Section 56 of the Bombay Police Act in a mechanical manner and externed the petitioner not only from limit of Ahmedabad Police Commissionerate but also from the adjoining districts of Ahmedabad Rural, Gandhinagar, Kheda and Mahesana for a period of two years.

5. The agony of the petitioner however continued before the appellate authority,

though by way of filling an appeal under Section 60 of the Act number of grounds were raised to challenge the order of competent authority and once again the submissions were reiterated before the appellate authority, which were canvassed before the Competent Authority. The main submission before the Appellate Authority was about so-called offences registered against the petitioner were of year 2000 and thereafter in the year 2003, out of which, offence bearing I.C.R.No.79 of 2000 registered at Meghaninagar Police Station for the offences punishable under Sections 324, 337, 294 (b) and 114 of Indian Penal Code and also under Section 135 (1) of the Bombay Police Act , pertaining to the disputes between the family members, while C.R.No.167/2003 was also of the same nature, wherein some of the cases were compromised. It was also submitted that competent authority, without verifying the correctness and the genuineness of the

offences, passed the order depriving the petitioner of his valuable right guaranteed under Article 19 and 21 of the Constitution of India by unreasonably restricting the petitioner from the concerned area as stated by the competent authority.

6. None of the contentions of the petitioner found favour with the appellate authority, and the order of competent authority came to be confirmed in the manner in which it was not expected from the Appellate Authority under the Act.

7. The learned counsel for the petitioner has ventilated his grievance against both the authorities i.e. externing authority as well as appellate authority, i.e. respondent nos.2 and 1 herein, and submitted that, though time and again the decisions have been rendered by the Hon'ble High Court and number of cases have

been remanded either to the appellate authority or the externing authority for considering the case afresh, whenever there is lacuna on the part of such authorities to appreciate the contentions and submissions raised either in the reply to show cause notice or in the appeal memo. But, however, the concerned authorities have continued to act mechanically in sheer defiance to the mandate of this Court as pronounced in the various cases of the subject matter under challenge.

8. However, the learned advocate for the petitioner has restricted his arguments that the competent authority has not considered his defense as submitted by him pursuant to the show cause notice dated 17.07.2004 which was received by the authority on 30th July, 2004. He has further submitted that the concerned authority has not even factually ascertained about outcome of the offences or even verified

the status of such offences and for the sake of exercising the powers, the order impugned is passed. He has therefore, submitted that in exercise of powers under Section 56(b), the concerned authority is duty bound to act in just and proper manner, particularly when the freedom of the citizen is likely to be taken away on arriving at a conclusion to the correctness of findings pertaining to the show cause notice and reply submitted thereof. According to him, the competent authority was duty bound to deal with all factual submissions canvassed qua the allegations of charges levelled in the show cause notice and in the present case, there appears to be total absence of any finding to the contentions of reply to the show cause notice, submitted by the petitioner. The learned counsel is constrained to submit that the approach of the appellate authority has also exhibited total dereliction of duties to be performed by the appellate

authority, inasmuch except the recital of registration of two offences and mention about three chapter cases and narrating about non-violent activities, no other findings have been given to the grounds raised in the memo of appeal. In the circumstances, it was submitted that the both the orders impugned in this petition passed by the respondent nos. 1 and 2 are required to be quashed and set aside, as unreasonably depriving the petitioner of his right to freedom under Article 19 and 21 of the Constitution of India and the cost be awarded accordingly.

It was further submitted that though asked for, the relevant aspects or gist of the statements of the witnesses were not supplied, which resulted into inadequate representation to the show cause notice by the petitioner and it was also submitted that no material did exist before the competent authority to extern

the petitioner from the adjoining four districts of the City of Ahmedabad for the period of two years with recital of about likelihood of the petitioner indulging in the similar illegal activities through his colleagues or agents from the adjoining districts also, no other material is shown by the Competent Authority, and therefore, the order of externment requires to be quashed and set aside as unreasonable, arbitrary and colorable exercise of powers in violation of Articles 14, 19 and 21 of the Constitution of India.

The learned counsel for the petitioner has also assailed order of appellate authority and submitted that the appellate authority is duty bound to deal with all the grounds in appeal reasonably and in different attitude is exhibited by the appellate authority and the mechanical approach is reflected, since no

findings have been given to the submissions made in appeal, are sufficient enough to quash and set aside the order of appellate authority, empowered under the statute to decide the appeal. In support of the above submissions, learned counsel for the petitioner relied upon decision of this Court reported at 1996 (1) GLH 53 and referred to Para 5 of the judgment, wherein this Hon'ble Court observed about requirement of passing the reasoned order by the appellate authority, the learned counsel relied upon on various other decisions of this Court which required, concerned authorities to apply their mind not in mechanical manner and to deal with all the submissions raised in the reply to show cause notice or the grounds in the appeal as the case may be.

9. Learned A.P.P. Mrs. Hansa B. Punani has taken this Court to the show cause notice, orders passed by the competent authority and

the appellate authority and it was submitted that as reflected from the order dated 18.03.2005 the Competent Authority has considered all the materials including the statements of witnesses and after considering the aspect about necessity of externing the petitioner from the contiguous districts of Gandhinagar, Kheda, Mahesana, Ahmedabad Rural for a period of two years the powers have been exercised. She has further submitted that it was not necessary for the appellate authority, while confirming the order of externment of the externing authority to deal with all the grounds in detail and after perusing the records and statements and submissions of the learned advocate for the petitioner, it was found by the appellate authority confirming the findings and ultimate conclusion of competent authority dated 18.03.2005 and therefore this is not a case where exercise of power under Article 226 of the Constitution of India is to

be exercised.

10. Having considered rival submissions, perused all the records it is apparent on the face of the record that the Competent Authority as well as the appellate authority have exhibited total non application of mind to the contentions of reply to the show cause notice and submissions and the grounds raised in the memo of appeal by the petitioner. In the reply to the show cause notice which was received by the competent authority respondent no.2 on 30th July, 2004, all the contentions specifically dealing with charges levelled in the show cause notice were raised and request was made to the concerned authority that so far as C.R.No.79 of 2000 and 167/2003 are concerned it was a dispute within the family and even the nature of ingredients in which the offence took place the same had no bearing on normal social life of the members of the area or the members of

the community of that area, which may have magnitude of disturbance of law and order, which requires drastic remedy of externing the petitioner from four adjoining districts for a period of two years. It was also submitted that some of the Chapter cases came to be compromised and certain incidents narrated by witnesses the date on which the marriage ceremony of the son of the petitioner was fixed, and thereafter also certain rituals continued and in such circumstances there was no reason for the petitioner to indulge in offence of extorting money from such witnesses. However, this aspects have been totally ignored by the competent authority i.e. respondent no.2 and without dealing with even single contention of the petitioner the powers under Section 56(b) have been exercised, disregard to the settled positions of law. The administrative and quasi-judicial authorities have acted in a manner in which the valuable right of the

externee to move freely within the territory of the country as guaranteed under Article 19 of the Constitution of India and right to life and liberty as guaranteed under Article 21 of the Constitution of India, are infringed. The ground as raised by the learned counsel for the petitioner with regard to delay in passing the order of externment dated 18.03.2005 by the Competent Authority is also worth appreciating the inasmuch as final submissions were already made by the petitioner on 17th July, 2004 while the order is passed after 8 months i.e. on 18.03.2005. The said submission raised by the learned advocate for the petitioner is clearly supported by the decision reported at 1997 Cri. L. R. (Guj.) 139 and the decision of division bench of this Court (Coram: K.J.Vaidhya and S.D.Dave, JJ.) rendered in S.C.A.No.1295 of 1994 on dated 24.01.1995 which clearly shows that the proceedings are to be completed within 6 months. In this case the respondent no.1 has

failed to adhere to the above prescribed time limit and therefore, the exercise of power under Section 56(b) of the Act is fatal and the orders impugned require to be quashed and set aside.

11. In view of the above, in the present case it is evinced from the record of the case that the competent authority, respondent no.2 herein as well as appellate authority respondent no.1, both have passed non speaking orders and thoroughly failed in discharging their duties and have exercised their powers conferred with, in unreasonable and arbitrary manner in violation of Article 14, 19 and 21 of Constitution of India ignoring the vital aspects of settled position of law of passing reasoned order as discussed above.

12. In view of the above discussion, I fully agree with the submissions made by the learned

counsel for the petitioner and am inclined to quash and set aside both the orders i.e. order dated 18.03.2005 passed by the externing authority as well as the order passed by the appellate authority dated 08.08.2005 confirming the order of the externment passed by the externing authority, as the impugned orders are non speaking, the exercise of powers under Section 56(b) of the Act is unduly delayed, which remain unexplained and therefore the impugned orders are quashed and set aside as violative of Articles 14, 19 and 21 of the Constitution of India. Petition is allowed. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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